

*The Department of Energy has opted to utilize the following agreement for Designated Non-Proprietary User Facilities transactions. Because these transactions are widespread across Departmental facilities, uniformity in agreement terms is desirable. Except for the *** provisions, minor modifications to the terms of this agreement may be made by CONTRACTOR, but any changes to the *** provisions or substantive changes to the non *** provisions will require approval by the DOE Contracting Officer, WHICH WILL LIKELY DELAY YOUR ACCESS TO THE USER FACILITY. In instances where DOE Contracting Officer approval for substantive changes cannot be obtained, Work for Others (WFOs) and Cooperative Research and Development Agreements (CRADAs) may be more appropriate due to the increased flexibility such agreements afford. Where this agreement is to be used as an umbrella agreement for multiple transactions it may be modified to reflect such usage.*

Non-Proprietary User Agreement

No. NPUSR00 ____

BETWEEN

The Regents of the University of California
("CONTRACTOR")

Facility Operator of Ernest Orlando Lawrence Berkeley National Laboratory
(hereinafter "Laboratory")

under U.S. Department of Energy ("DOE") Contract No. DE-AC02-05CH11231

AND

<User Institution Legal Name>
("USER")

(Collectively, the "Parties")

The obligations of the above-identified DOE Contractor may be transferred to and shall apply to any successor in interest to said Contractor continuing the operation of the DOE Non-Proprietary User Facility involved in this User Agreement.

The USER, which may also be referred to as "Participants" in this Agreement, includes employees, consultants, representatives, and collaborators, who may be assisting USER by providing Genetic Resources to the Joint Genome Institute ("JGI" or "User Facility").

ARTICLE I. FACILITIES AND SCOPE OF WORK

CONTRACTOR shall sequence the Genetic Resources, as described in the Appendix which is attached to and made a part of this Agreement, at the JGI. The Parties will agree to a Scope of Work ("Work") that shall set forth the technical scope of work, including a Genetic Resource description and deliverables, to be performed pursuant to this Agreement and can be modified as necessary without amending this Agreement. Additional future Appendices referencing this Agreement may be submitted by USER for sequencing additional Genetic Resource materials. Such additional Appendices will be considered to be part of this Agreement upon acceptance by CONTRACTOR. Each Appendix shall set forth the technical scope of work of a specific project, including a Genetic Resource Description and deliverables, to be performed pursuant to this Agreement. The Work shall not be considered proprietary information and shall be publicly releasable. The Parties agree that an initial abstract of the Work to be performed shall be a deliverable under this Agreement.

If USER needs to furnish equipment, tooling, test apparatus, or assist in performance of sequencing tasks at the JGI, this Agreement will be amended accordingly. However, CONTRACTOR may grant to USER access to the JGI to review the sequencing data and discuss issues with the JGI staff.

IF THE USER REQUIRES ACCESS TO OTHER FACILITIES AT THE LABORATORY, A DIFFERENT AGREEMENT WILL NEED TO BE EXECUTED.

ARTICLE II. TERM OF THE AGREEMENT

This Agreement shall have a term of five (5) years from the effective date. The term of this Agreement shall be effective as of the date on which it is signed by the last of the Parties. Unless terminated by either Party in accordance with Article XVI., or as directed by DOE, this Agreement shall automatically renew for additional five-year terms.

ARTICLE III. COST

Each Party will bear its own costs and expenses associated with this Agreement. No money will be transferred to or from either Party as consideration, in whole or in part, for this Agreement.

ARTICLE IV. ADMISSION REQUIREMENTS—JGI SITE ACCESS

If Participants consult with JGI staff on site, USER must complete all JGI Site Access documentations and requirements. USER must comply with all applicable safety, health, access to information, security and environmental requirements of the JGI.

ARTICLE V. PROPERTY AND MATERIALS***

- A. While every effort will be made to properly handle the material, USER acknowledges that any material supplied by USER may be damaged, consumed or lost. Materials (including residues and/or other contaminated material) remaining after performance of the Work or analysis will be removed in their then condition and handled in accordance with the Work.
- B. USER asserts that it has either title or sufficient legal rights in the genetic resource to be provided to the JGI for sequencing.

ARTICLE VI. SCHEDULING***

USER understands that CONTRACTOR will have sole responsibility and discretion for allocating and scheduling usage of the User Facilities and equipment needed for or involved under this Agreement.

ARTICLE VII. INDEMNITY AND LIABILITY***

- A. **Personnel Relationships**
USER shall be responsible for the acts or omissions of Participants.
- B. **Product Liability**
To the extent permitted by United States ("US") and US State law of the USER, if USER utilizes the Work derived from this Agreement in the making, using, or selling of a product, process or service, then USER hereby agrees to hold harmless and indemnify CONTRACTOR and the US Government, their officers, agents and employees from any and all liability, claims, damages,

costs and expenses, including attorney fees, for injury to or death of persons, or damage to or destruction of property, as a result of or arising out of such utilization of the Work by or on behalf of USER, its assignees or licensees.

C. General Indemnity

To the extent permitted by US and US State law of the USER, USER hereby agrees to indemnify and hold harmless CONTRACTOR and the US Government, their officers, agents and employees from any and all liability, claims, damages, costs and expenses, including attorney fees, for injury to or death of persons, or damage to or destruction of property, to the extent such liability, claims, or damages is caused by or contributed to the negligence or intentional misconduct of USER or its employees or representatives during the performance of the Work under this Agreement.

D. Patent and Copyright Indemnity—Limited

To the extent permitted by US and US State law of the USER, USER shall fully indemnify the US Government and CONTRACTOR and their officers, agents, and employees for infringement of any United States patent or copyright arising out of any acts required or directed or performed by USER under the Agreement to the extent such acts are not normally performed at the User Facility.

E. The liability and indemnity provisions in paragraphs B, C and D above shall not apply unless USER shall have been informed as soon as practicable by CONTRACTOR or the US Government of the suit or action alleging such infringement, and such indemnity shall not apply to a claimed infringement that is settled without the consent of USER unless required by a court of competent jurisdiction.

F. General Disclaimer -

THE GOVERNMENT AND CONTRACTOR MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE USER FACILITY FURNISHED HEREUNDER. IN ADDITION, THE GOVERNMENT, CONTRACTOR AND USER MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. THE GOVERNMENT, CONTRACTOR AND/OR USER SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO USE OF SUCH FACILITIES, RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT.

ARTICLE VIII. PATENT RIGHTS

The Parties do not contemplate any inventions, patents, or trademarks to be developed under this Agreement.

ARTICLE IX. RIGHTS IN TECHNICAL DATA***

A. Definitions

1. "Technical Data" means recorded information regardless of form or characteristic, of a scientific or technical nature. Technical Data as used herein does not include financial reports, costs analyses, and other information incidental to Agreement administration.
2. "Proprietary Data" means Technical Data which embody trade secrets developed at private expense, outside of this Agreement.
3. "Unlimited Rights" means right to use, duplicate, or disclose Technical Data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.
4. "Genetic Resources" means genetic material of actual or potential value.

B. Allocation of Rights

The US Government and the USER shall have Unlimited Rights in Technical Data first produced or specifically used in the performance of this Agreement. USER may request the data when generated if practical. Sequences and related information that will be posted to GenBank or otherwise be made publicly available may be used by anyone, including CONTRACTOR and USER, for any purpose, and may result in intellectual property rights accruing to such person or entity.

C. Deliverables

1. USER agrees to furnish to DOE or CONTRACTOR those data, if any, which are (a) specified to be delivered in Appendices, (b) essential to the performance of Work by DOE or CONTRACTOR personnel or (c) necessary for the health and safety of such personnel in the performance of the Work. Any data furnished to DOE or CONTRACTOR shall be deemed to have been delivered with Unlimited Rights.
2. Upon completion or termination of the project, USER agrees to deliver to DOE and CONTRACTOR a nonproprietary report describing the Work performed under this Agreement.

D. Legal Notice

The following legal notice shall be affixed to each report or publication resulting from this Agreement which may be distributed by USER:

DISCLAIMER NOTICE

This document contains results from work performed under the auspices of the U.S. Department of Energy's Office of Science, Biological and Environmental Research Program and by the University of California, Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory and Los Alamos National Laboratory. Neither CONTRACTOR, DOE, the U.S. Government, nor any person acting on their behalf: (a) make any warranty or representation, express or implied, with respect to the information contained in this document; or (b) assume any liabilities with respect to the use of, or damages resulting from the use of any information contained in the document.

E. Copyrighted Material

USER agrees that it will not knowingly include any copyrightable material furnished or delivered under this Agreement without a license or without the consent of the copyright owner, unless it obtains specific written approval of the DOE Contracting Officer for the inclusion of such copyrighted materials.

F. Disclosure of Proprietary Data

The USER shall not bring or disclose Proprietary Data into the User Facility except at USER's own risk. Any such data, regardless how it is marked, shall be deemed Technical Data and CONTRACTOR shall have Unlimited Rights in the data.

G. Relationship with the Convention on Biological Diversity

The permitted use of the Genetic Resources will be limited to that which is described in the Work. Substantive changes in the Work will require execution of a new Appendix. JGI will not transfer the Genetic Resources to other parties without the consent of USER. Sequence data from the Genetic Resources will be posted to GenBank or will otherwise be made publicly available for use by anyone for any purpose. The USER understands that the JGI cannot limit how the sequence data will be ultimately used after posting to GenBank.

Pursuant to the Convention on Biological Diversity, JGI will provide benefits-sharing and capacity-building to USER by allowing USER access to JGI, so that USER may benefit from the expertise of JGI staff in the area of genomic sequencing. In addition to obtaining the sequence data from the Genetic Resources, USER will benefit by having the opportunity to develop its own expertise in the field of genomic sequencing, and will thereby build such capacity for its country.

ARTICLE X. LABORATORY SITE ACCESS, SAFETY AND HEALTH*--RESERVED**

ARTICLE XI. PERSONNEL RELATIONSHIPS*--RESERVED**

ARTICLE XII. EXPORT CONTROLS***

USER acknowledges that the export of goods or Technical Data may require some form of export control license from the US Government and that failure to obtain such export control license may result in criminal liability under the laws of the United States.

ARTICLE XIII. PUBLICATIONS***

- A.** USER and CONTRACTOR will provide each other copies of articles or any publication of information generated pursuant to this Agreement for review and comment 14 days prior to publication.
- B.** USER will not use the name of CONTRACTOR or the US Government or their employees in any promotional activity, such as advertisements, with reference to any product or service resulting from this Agreement, without prior written approval of the US Government and CONTRACTOR.

ARTICLE XIV. DISPUTES***

The Parties will attempt to jointly resolve all disputes arising under this Agreement. If the Parties are unable to jointly resolve a dispute within a reasonable period of time, either Party may contact the Laboratory's Technology Transfer Ombudsman (TTO) to provide assistance. The TTO may work

directly to resolve the dispute or, upon mutual agreement of the Parties, contact a third party neutral mediator to assist the Parties in coming to a resolution. The costs of the mediator's services will be shared equally by the Parties. In the event that an agreement is not reached with the aid of the ombudsman or mediator, the Parties may agree to have the dispute addressed by neutral evaluation. The decision rendered by the neutral evaluator shall be nonbinding on the Parties, and any costs incurred there from shall be divided equally between the Parties. Upon mutual agreement, the Parties may request a final decision by the DOE Contracting Officer. Absent resolution, either Party may seek relief in a court of competent jurisdiction.

ARTICLE XV. CONFLICT OF TERMS***

This Agreement constitutes the primary document which governs the Work described in the attached Appendices. In the event of any conflict between the terms of this document and any other document issued by either Party, the terms of this document shall prevail.

ARTICLE XVI. TERMINATION***

Either Party may terminate this Agreement for any reason at any time by giving not less than thirty (30) days prior written notice to the other Party. Notice will be deemed made as of the day of receipt. The obligations of any clause of this Agreement, which by their nature extend beyond its termination, shall remain in full force and effect until fulfilled.

FOR USER

By: _____

Name: _____
(print/type)

Title: _____
(print/type)

Date: _____

FOR CONTRACTOR

By: _____

Name: _____

Title: _____

Date: _____